

<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On December 11, 2001 appellant, then a 52-year-old industrial hygienist, filed a claim alleging that she sustained injury to her neck and back while she was on a mandatory travel assignment to attend training classes in Washington, DC. She asserted that she was in the Frances Perkins Building of the Department of Labor on September 11, 2001 and was directed to leave the building due to the terrorist attack on that date. Regarding the cause of her injury, appellant stated, “I walked down 5 flights, walked 2.5 hours to my hotel, drove 17 hours to get to Memphis airport, and waited 9 hours for delayed flight to get home.” She claimed that employing establishment officials advised her and a coworker to make alternate plans to return home earlier than originally scheduled and submitted a statement of a coworker which contained a similar description of the events of September 2001.<sup>2</sup>

In an October 2, 2003 decision, the Office denied appellant’s claim indicating that she did not establish any compensable employment factors. The Office stated that appellant deviated from her travel orders because there was no evidence that she was required to leave the Washington, DC area or to drive to Memphis. On March 15, 2004 appellant requested reconsideration of her claim and submitted copies of emails in which two supervisors discussed her arrangements to return home from Washington, DC.

In a March 29, 2004 decision, the Office denied appellant’s reconsideration request indicating that the evidence she submitted was cumulative in nature. In an April 1, 2005 order remanding case, the Board set aside the Office’s March 29, 2004 decision and remanded the case to the Office for the performance of a merit review of appellant’s claim. The Board found that the evidence submitted by appellant in connection with her reconsideration request constituted relevant and pertinent evidence which had not been previously considered by the Office.

In a July 7, 2005 decision, the Office denied appellant’s claim that she sustained physical and emotional conditions in the performance of duty. It modified its earlier decisions to reflect that appellant had established employment factors with respect to her efforts to leave Washington, DC and return home after the terrorist attack of September 11, 2001. The Office further found, however, that appellant did not submit sufficient medical evidence to establish that she sustained a physical or emotional condition due to those employment factors.

Appellant submitted evidence in support of her claim and, in a September 13, 2006 merit decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a physical or emotional condition due to the accepted events of September 2001.

In a September 10, 2007 letter, appellant requested reconsideration of the Office’s September 13, 2006 decision and discussed problems she was having in obtaining additional medical evidence. She submitted bills and other administrative documents concerning her

---

<sup>2</sup> Appellant later claimed that the events of September 2001 also caused her to sustain post-traumatic stress disorder.

medical treatment between 2002 and 2005.<sup>3</sup> In an October 12, 2007 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup> The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

### **ANALYSIS**

The Office found that appellant had established employment factors with respect to her efforts to leave Washington, DC and return home after the terrorist attack of September 11, 2001. The Office further found, however, that appellant did not submit sufficient medical evidence to establish that she sustained a physical or emotional condition due to these employment factors.

In a September 10, 2007 letter, appellant requested reconsideration of her claim and discussed problems she was having in obtaining additional medical evidence. She submitted bills and other administrative documents concerning her medical treatment between 2002 and 2005. The Board finds that the submission of this evidence would not require the Office to reopen appellant's claim for merit review because it is not relevant to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that she sustained a physical or emotional condition due to the accepted events of September 2001.<sup>9</sup> The

---

<sup>3</sup> The record contains a statement detailing appellant's problems at work but it is unclear who produced this statement.

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> *See supra* note 8 and accompanying text.

main issue of the primary issue is medical in nature but appellant did not submit any medical evidence in connection with her September 2007 reconsideration request.<sup>10</sup>

Appellant has not established that the Office improperly denied her request for further review of the merits of its September 13, 2006 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' October 12, 2007 decision is affirmed.

Issued: August 13, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>10</sup> The record contains a statement detailing appellant's problems at work. However, it is unclear who produced this statement and such factual evidence would not be relevant to the main issue of the present case.